

Regulations and the Ready Mixed Concrete Industry

(as of November 2014)

1. EPA Proposal for Disposal of Coal Combustion Residuals From Electric Utilities (Fly Ash)
 - a. Direct 10% increase in the cost of ready mixed concrete (industry estimate)
 - b. \$20 billion cost collectively among all stakeholders (industry estimate)
 - c. EPA estimates this rule's cost at between \$0.6 and \$1.5 billion
 - d. Many unknown costs including but not limited to:
 - i. "Stigma" associated with potentially "hazardous" concrete
 - ii. Decrease in sales of "fly ash" concrete
 - iii. Litigation
 - iv. Reduced U.S. infrastructure durability due to decreased use of stronger "fly ash" concrete
 - e. Rule is currently stalled at EPA
2. Health Care Law (Public Law No. 111-148)/Patient Protection and Affordable Care Act (H.R. 3590)
 - a. \$950 billion over ten years (Congressional Budget Office)
 - b. \$52 billion paid by employers over 10 years in penalties for noncompliance (Joint Committee on Taxation)
 - c. \$569 billion in new and higher taxes on businesses and individuals (U.S. Chamber of Commerce)
 - d. NRMCA is continuing efforts to determine specific industry impacts associated with the law's compliance and implementation
 - e. Law has been finalized
3. EPA Portland Cement National Emissions Standards for Hazardous Air Pollutants (NESHAP) Proposal
 - a. \$3.4 Billion to implement (industry estimate)
 - b. \$15/ton of cement increase (industry estimate)
 - c. Threatens 18 plant closures (11 million metric tons capacity lost) (industry estimate)
 - d. 1,800 direct jobs and 9,000 indirect jobs (industry estimate)
 - e. \$340 million (EPA cost estimates)
 - f. \$4 billion for overall cement industry compliance (industry estimate)
 - g. 10% reduction in U.S. cement production (EPA estimate)
 - h. Long-term reduction in U.S. cement production of 8-15% annually (Senate Minority EPW Cmte Report, 2010)
 - i. Results in 28 million more tons of cement imported, mainly from China (Senate Minority EPW Cmte Report, 2010)
 - j. Resulting in a ready mixed concrete price increase of roughly 10% (industry estimate)
 - k. Rule has been finalized, technical changes are pending
4. EPA Commercial and Industrial Solid Waste Incinerator (CISWI)
 - a. Limits for new sources are so restrictive, EPA states that they expect no new (or reconstructed or modified) CISWI units will be built in the U.S.

- i. Therefore, any new, modified, or reconstructed cement plant that wants to use a material that is defined as a “solid waste” would be impossible to permit (industry estimate)
 - ii. There is a real concern that existing cement plants using alternate materials defined as “solid wastes” could do something unrelated to the use of those materials and still trigger a “modification”, subjecting them to impossible limits (industry estimate)
 - b. \$2 billion to implement (exclusive of the \$3.4 billion from NESHAP) (industry estimate)
 - c. Resulting in a ready mixed concrete price increase of roughly 8% (industry estimate)
 - d. Rule has been finalized
- 5. EPA Emission Standards for Industrial, Commercial and Institutional Boilers
 - a. Creates national emission standards for hazardous air pollutants for non-gaseous fuel burning boilers
 - b. Mainly covers major source boilers, however does provide for less stringent measures to regulate area source (small) boilers common on aggregate processing and ready mixed concrete plants
 - c. Requires businesses that use area source boilers, such as ready mixed concrete producers, to receive a “tune-up” every other year to certify the unit is operating according to the manufacturer’s specifications
 - d. EPA estimates the rule, for both major and area source boilers, to cost \$3 billion
 - e. Potential industry financial impacts are still being determined
 - f. Rule has been finalized
- 6. EPA New Source Performance Standards (NSPS)
 - a. Limits for NO_x, SO₂ and PM at new, modified and reconstructed plants based on “best demonstrated technology”
 - b. Facilities that are “modified” may have a much harder time retrofitting a plant to meet these limits compared to a new plant designed from the start (industry estimate)
 - c. NSPS + NESHAP will add roughly:
 - i. \$50-80 million capital cost to a new plant (more for a “modified” plant) (industry estimate)
 - ii. \$16-20/ton of cement (industry estimate)
 - d. Resulting in a ready mixed concrete price increase of roughly 10% (industry estimate)
 - a. Rule has been finalized
- 7. EPA Greenhouse Gas Permitting Program
 - a. \$7 trillion loss to U.S. GDP by 2030 (Heritage Foundation)
 - b. 3 million manufacturing jobs lost by 2030 (Heritage Foundation)
 - c. Unknown increased permitting costs (industry estimate)
 - d. Increase of roughly \$30-\$50/ton of cement (industry estimate)
 - e. Proposed 30% cut in CO₂ emissions nationwide by 2030
 - f. Resulting in a ready mixed concrete price increase of roughly 10% (industry estimate)
 - g. GHG permitting program was proposed in June 2014

8. EPA Ozone 8-hr National Ambient Air Quality Standard (NAAQS)
 - a. Under state implementation plans (SIPs), existing cement plants could be required to add controls for NOx and VOCs (as precursors to ozone)
 - b. Retrofitting existing plants would cost \$1-\$4 million and \$0.3-\$1.5/ton of cement increase (industry estimate)
 - c. EPA estimates the cost of compliance between \$19 billion and \$90 billion
 - d. Resulting in a ready mixed concrete price increase of roughly 6% (industry estimate)
 - e. Rule's consideration was withdrawn in 2011, however is being re-examined as of August 2014

9. EPA SO2 1-hr NAAQS
 - a. If an existing plant is not already adding a scrubber for HCl control under NESHAP, to add a scrubber to an existing plant costs would be \$30-\$40 million and \$4-\$5/ton of cement (industry estimate)
 - b. Resulting in a ready mixed concrete price increase of roughly 6% (industry estimate)
 - c. Rule's consideration was withdrawn in 2011, however is being re-examined as of August 2014

10. EPA NO2 1-hr NAAQS
 - a. Costs are similar to the EPA Ozone 8-hr NAAQS (industry estimate)
 - b. Resulting in a ready mixed concrete price increase of roughly 6% (industry estimate)
 - c. Rule's consideration was withdrawn in 2011, however is being re-examined as of August 2014

11. NLRB Employee Rights Poster Proposal "Poster Rule"
 - a. Would have required virtually all US employers post a notice detailing employee rights under the NLRA, along with information on how to unionize a workplace
 - b. Industry financial impacts are undetermined
 - c. Rule has been invalidated by the courts

12. NLRB Proposal to Shorten Union Elections "Quickie Elections"
 - a. NLRB rule would shorten union election time frame from an average of between 45 to 60 days, down to potentially just 10
 - b. Potential industry financial impacts are still being determined
 - c. Rule was invalidated by the courts, but NLRB re-proposed the rule in February 2014

13. Department of Labor Proposed Rule to Change the Definition of "Advice"
 - a. DOL rule would change the term "advice" as it relates to communications between an employer and a consultant on educating employees about a union drive.
 - b. The change would make just about any type of communication on the matter subject to public disclosure by both employer and consultant, along with any related fees. The disclosure would also have to be signed by both company president and treasurer under penalty of perjury.
 - c. Potential industry financial impacts are still being determined
 - d. Rule has been stalled at DOL

14. NLRB Case on "Micro-Unions"
 - a. NLRB case aims to "cherry-pick" specific units of employees to unionize
 - b. Potential industry financial impacts are still being determined
 - c. This case ruling is final

15. NLRB efforts on Concerted Protected Activity, Social Media, Whistleblower Protections, and FLSA Agreements with OSHA and FMCSA
 - a. All of these items aim to limit Employer Free Speech and control over the workplace
 - b. Potential industry financial impacts are still being determined
 - c. All of the efforts are either final, in court, or being pursued in some other fashion

16. EPA/Army Corps of Engineers Clarification of US Waters Protected by the Clean Water Act
 - a. Would change the CWA jurisdiction from “navigable water of the United States” to just “waters of the United States”
 - b. Adds another layer of unnecessary regulation
 - c. Potentially require ready mixed concrete operations to obtain permits for any standing water on a ready mixed concrete plant
 - d. Potential industry financial impacts are still being determined
 - e. Rule was proposed in April 2014

17. EPA Multi-Sector General Permit for Stormwater Discharges Rule
 - a. Would require electronic reporting of new Stormwater Discharge Permits to EPA
 - b. Requires permit holders to publish online their site specific Stormwater Pollution Prevention Plan (SWPPP)
 - c. Mandates greater “housekeeping” and “sweeping” mandates
 - d. Shortens corrective actions for stormwater violations down to just 14 days
 - e. Contains new requirements for Endangers Species and Historic Properties protections
 - f. Potential industry financial impacts are still being determined
 - g. The rule was proposed in November 2013

18. EPA Changes to Enforcement of TRI Reporting for Lead
 - a. Annual reporting to the Toxic Chemical Release Inventory (TRI) is required by ready mixed concrete producers if they have knowledge of having used certain amounts of toxic chemicals over established thresholds
 - i. EPA in the last year has started to enforce TRI reporting on the assumption that ready mixed concrete producers should have known the amount of toxic chemicals used, regardless of actually knowing the presence of or amounts of those chemicals
 - b. The potential financial implications on the industry due to failure to comply can be very costly
 - c. NRMCA is advising NRMCA members of EPA’s heightened activities and their options
 - d. TRI Reporting became effective in 1986

19. EPA Wage Garnishment Proposed Rule
 - a. Would allow EPA to unilaterally garnish an individual’s wages, up to 15%, for delinquent non-tax EPA debts
 - b. Proposal proposes concerns for due process, EPA’s need for such a scheme, and the changing function of EPA
 - c. The financial implications on the ready mixed concrete industry are still being determined
 - d. The rule was proposed July 2014

20. EPA Heavy-Duty Truck Emissions Standards

- a. Could require engine manufacturers of heavy-duty trucks to incorporate a minimum miles per gallon amount for engine use
- b. Could require engine manufacturers of heavy-duty trucks to incorporate CO2 reductions into their engines processes
- c. The potential indirect financial implications on the industry are still being determined, although the anticipated trickledown effect from higher priced engines will likely be costly
- d. Rule is currently being drafted at EPA

21. DOT Truck Size & Weight Limitations

- a. Studies currently being done by the U.S. Department of Transportation (DOT) are examining the effects of truck weights on both roads and the environment. The studies will examine both current weight limits and hypothetical higher weight limits
- b. Favorable outcomes from the study are unlikely, as DOT refused to consider NRMCA's request to include 3- and 4-axle mixer trucks
- c. Such tilted studies could have the effect of freezing current weight limits and/or restricting limits either nationwide or in certain localities
- d. The potential financial implications on the industry are unknown
- e. The studies were slated to be finalized and published in November 2014

22. FMCSA Proposal to Require Electronic Logging Devices (ELDs) in All Commercial Motor Vehicles

- a. NRMCA has determined that, if the industry is required to comply, FMCSA's proposal will potentially cost the ready mixed concrete industry at least \$57 million to implement, and an additional \$6 million annually
- b. FMCSA estimates the rule to cost \$2 billion
- c. NRMCA is working through the appropriate legislative and regulatory bodies to secure an industry exemption
- d. Rule was proposed in March 2014

23. FMCSA Drivers' Hours of Service Rule

- a. The rule aims to reduce the amount of time drivers have behind the wheel and on-duty
- b. The potential financial implications on the industry are currently unknown
- c. FMCSA estimates the cost to be at least \$1 billion
- d. NRMCA is working through the appropriate legislative and regulatory bodies to secure an industry exemption
- e. Rule has been finalized

24. FMCSA National Registry of Certified Medical Examiners

- a. Establishes a database of the only medical examiners capable of certifying CMV driver's medical cards for obtaining and/or renewing a CDL
- b. Medical examiners, prior to being listed in the registry, are required to pay a fee and take an FMCSA exam full of references to sleep apnea and other ailments that "could possibly result in driver fatigue", however the exam never states that examiners need to test for these ailments

- c. The registry has led to numerous cases across of the country of examiners requiring new testing and medical limitations for drivers that previously weren't required and still aren't
- d. Unfortunately, these practice has little to no recourse since doctors are well within their medical rights to require such tests if they see fit
- e. The financial implications on the industry are still being determined, however the price of many of these new tests are costly, especially if health insurance doesn't cover it
- f. The requirement to use a Medical Examiner off of the registry became effective May 2014

25. FMCSA Sleep Apnea Potential Proposed Rule

- a. Potentially would require all CMV drivers to be tested for sleep disorders such as sleep apnea
- b. Potential burden on the industry could include health insurance issues, loss of drivers, high costs of testing and treatment for sleep disorders
- c. The potential financial implications on the ready mixed concrete industry are currently unknown, although anticipated to be very costly
- d. Rule is currently being drafted at FMCSA

26. FMCSA Increased Insurance Requirements for CMVs

- a. Would require increased minimum amounts for insuring Commercial Motor Vehicles (CMVs)
- b. Minimums are thought to possible increase from the current \$750,000 level to \$2.7 million
- c. The potential financial implications on the ready mixed concrete industry are currently unknown, although anticipated to be very costly due to likely premium increases
- d. Rule is currently being drafted at FMCSA, should be proposed in late 2014

27. FMCSA Speed Governors for Commercial Motor Vehicles Potential Proposed Rule

- a. Would require CMVs have a device preventing them from going over a certain speed limit
- b. What isn't known is what the speed limit may be, or whether the rule would focus on just new trucks or new and in-service trucks.
- c. The potential financial implications on the industry are still being determined, although the anticipated effect from higher priced engines and/or retrofits will likely be costly
- d. The rule is currently being drafted at FMCSA

28. FMCSA Compliance, Safety, Accountability (CSA) Program

- a. Program uses FMCSA and state data to compute how safe or unsafe carriers and drivers are
- b. The program often contains wrong data
- c. Information can be seen by public citizens no qualified to understand the data
- d. The program incorporates data on crashes regardless of fault
- e. The financial implications on the industry have proven to be costly
- f. Incremental changes on fault have been made, but much more is needed
- g. CSA was finalized and became effective in 2010

29. FMCSA Entry-Level Driver Training

- a. Would require a minimum number of hours for classroom and behind-the-wheel driving time as prerequisites before a potential driver could receive a Commercial Driver's License (CDL)
- b. The potential financial implications on the ready mixed concrete industry are currently unknown
- c. FMCSA is considering a Negotiated Rulemaking, as of August 2014

30. FMCSA Drug and Alcohol Clearinghouse

- a. Establishes an FMCSA run database to house all drug and alcohol violations by CMV drivers
- b. Clearinghouse would only contain recordable violations and drug test refusals
- c. Employers would be required to check the clearinghouse once a year for each driver to see if their drivers have been included, and before hiring an new drivers
- d. Employers would have to obtain the written consent of drivers to view the clearinghouse data
- e. Accessing the database does include a nominal cost. For an average size concrete plant of roughly 10 drivers, the annual cost would be less than \$100, in addition to other drug and alcohol testing fees already being incurred
- f. The rule was proposed in February 2014

31. OSHA Proposal to Reduce Exposure Limits of Crystalline Silica

- a. OSHA rule would halve the current Permissible Exposure Limit (PEL) and require employers to implement greater measures to limit exposure to Silica
 - i. Including purchasing medical monitoring and surveillance equipment, hazard clothing, materials to create regulated areas, materials for more record keeping
- b. The potential financial implications on the ready mixed concrete industry are currently estimated be between \$16.5 million and \$657 million annually
- c. The rule was proposed in September 2013

32. NHSTA Proposal for Electronic Stability Control (ESC) in New Heavy Vehicles

- a. NHSTA rule would require all new heavy-duty trucks be equipped with electronic stability control (ESC)
 - i. Would only be required in new, tractor-trailer units, not single unit/single chassis trucks
- b. Potentially could be broadened to include single unit trucks, or eventually required to be retrofitted on current in-service trucks
- c. The potential financial implications to the ready mixed concrete industry are currently unknown. However, if the rule is expanded the costs will rise dramatically
- d. Rule is awaiting finalization

33. OSHA Hazard Communication Standard (HCS)

- a. Requires and changes current methods for communicating the hazards of hazardous chemical products in the workplace
 - i. Includes new labeling requirements, employee training, creation and distribution of Safety Data Sheets (SDSs)

- b. The potential financial implications on the ready mixed concrete industry are currently unknown, although anticipated to be costly due to employee training and reliance on accurate SDS distribution to all customers
- c. Rule has been finalized

34. OSHA Backover Injuries and Fatalities Potential Proposed Rule

- a. OSHA is in the early stages of determining if more regulation is needed to prevent backover injuries and fatalities in industries with vehicles that have hindered visibility
 - i. Due to the physical nature of ready mixed concrete trucks and the operations these trucks are used in, ready mixed concrete operations are a prime target for such a rule
 - ii. A new rule could require installation of new technologies such as cameras, backup alarms and proximity detectors, or requiring trained spotters
- b. The potential financial implications on the ready mixed concrete industry are still being determined, although anticipated to be very costly
- c. NRMCA is advocating for publishing "best management practices" instead
- d. Rule is being drafted at OSHA

35. OSHA Injury and Illness Prevention Program Proposed (I2/P2) Rule

- a. An I2/P2 rule would require virtually all employers to devise a plan to identify and fix hazards in the workplace
 - i. I2/P2 could require more signage, construction to fix any perceived dangers, employee training, purchase of protective equipment
- b. The potential financial implications on the industry are currently unknown
- c. Rule is currently being drafted at OSHA

36. OSHA Injury and Illness Electronic Tracking Rule

- a. Would change the current Injury/Illness tracking requirements to include quarterly and annual reporting to OSHA of reportable injuries and illness
- b. Would require all injury and illness summary data sent to OSHA by published online for the public to view
- c. The potential financial implications on the ready mixed concrete industry are still being determined
- d. The rule was proposed November 2013

37. OSHA Fall Protection Proposed Rule

- a. While largely unaffected by this rule, the ready mixed concrete industry would fall under one alarming provision requiring workers to be tethered when climbing on a commercial motor vehicle above a yet to be determined height
 - i. This provision would result in a less safe work environment for ready mixed concrete truck drivers
 - ii. Compliance with this provision would require employee training, new protective equipment, and possible retrofitting of trucks

b. The potential financial implications on the ready mixed concrete industry are still being determined

c. NRMCA opposes such should it contain language about harnesses or tethers for mixer drivers when washing or inspecting the drum.

d. Rule is stalled at OSHA

38. Internal Revenue Service (IRS) "Glider Kit" Guidance

a. Changes IRS practices for applying a federal excise tax (FET) to purchases of equipment used for updating/retrofitting older trucks, such as mixer trucks (commonly known as "glider kits")

b. The guidance changes the tax law to require roughly 0% FET on glider kit purchases to increase to a 12% FET on glider kits

c. Previously, purchasing a glider kit instead of buying a new truck was less expensive, this common practice has now been increased by tens of thousands of dollars

d. The financial implications to the concrete industry are still being determined, however, if the guidance remains, the cost for glider kits may rise dramatically

e. The 12% FET is currently being applied by multiple glider kit suppliers. Multiple companies and industry groups are discussing with the IRS whether the 12% collection will continue

f. The IRS Guidance was issued in January 2014